No. 18-485

IN THE

Supreme Court of the United States

EDWARD G. MCDONOUGH,

Petitioner,

v.

YOUEL SMITH, INDIVIDUALLY AND AS SPECIAL DISTRICT ATTORNEY FOR THE COUNTY OF RENSSELAER, NEW YORK, AKA TREY SMITH,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF THE INNOCENCE NETWORK AS AMICUS CURIAE SUPPORTING PETITIONER

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STATEMENT OF INTEREST

The Innocence Network (the "Network") is an association of organizations dedicated to providing *pro bono* legal and investigative services to individuals seeking to prove their innocence after having been wrongfully convicted.[1] Established in 2005, the Network's sixty-nine member organizations represent hundreds of convicted prisoners across all fifty states and the District of Columbia, as well as in Canada, New Zealand and the United Kingdom. The Network also works to redress more broadly the causes of wrongful convictions, as it and its members are dedicated to improving the reliability of the criminal justice system for future cases. Drawing on the lessons from cases in which innocent people were convicted, the Network promotes study and reform designed to enhance the truth-seeking functions of the criminal justice system and to ensure that wrongful convictions are prevented.

The Network has a unique perspective on the question presented in this case. Its member organizations have represented hundreds of individuals who have been wrongfully convicted, many due to fabrication of evidence by law enforcement officials. Further, from working with

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[1] Pursuant to this Court's Rule 37.3(a), all parties have consented to the filing of this brief.

Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

wrongfully accused defendants and exonerees, the Network is intimately familiar with the major hurdles to litigating a 42 U.S.C. § 1983 claim while criminal proceedings are pending.

While the Network is focused primarily on proving the innocence of wrongfully convicted individuals, the Network also has an inherent interest in the ability of exonerees, including those whom it assists directly, to recover damages for the constitutional harms they have suffered. The availability of a damages remedy not only vindicates the rights of those exonerees, but also helps ensure that state officials (and in particular law enforcement officials) are aware of, and comply with, their constitutional obligations, consistent with the Network's mission. Such suits can thus help advance the Network's mission to help secure the release of wrongly convicted individuals as well as help prevent future wrongful convictions. And § 1983 suits may provide an opportunity to uncover the causes of a wrongful conviction beyond what is available during post-conviction litigation or the exoneration process. The Network thus has an inherent interest in ensuring the continued vitality of § 1983 claims involving wrongful prosecutions and convictions.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Court should apply the same type of favorable-termination rule to § 1983 fabrication claims like Petitioner's that is already universally applied to § 1983 wrongful-conviction claims.

For twenty-five years, courts around the country have applied this Court's rule from *Heck v. Humphrey* that § 1983 claims seeking damages attributable to a wrongful conviction—including claims that the conviction was based on fabricated evidence—do not accrue until the conviction has been invalidated. That delayed-accrual rule, patterned on the favorable-termination rule for common-law malicious-prosecution claims, promotes the goals of finality and consistency of judgments. In *Wallace v. Kato*, this Court clarified that the accrual rule for *all* § 1983 claims should be determined through the process, used in *Heck*, of analogizing to the closest common-law tort. In the ensuing twelve years, courts (including the Third, Sixth, Ninth and Tenth Circuits) have repeatedly held that § 1983 fabrication claims challenging criminal proceedings are most analogous to claims for malicious prosecution, and thus the same type of favorable-termination requirement that applies to wrongful-conviction claims should apply to all claims that fabricated evidence caused wrongful criminal proceedings.

The Second Circuit, however, reached an opposite result. The Second Circuit created an immediate accrual rule for § 1983 fabrication claims pertaining to pretrial detention without ever analogizing to the common law, as this Court instructed to do in *Wallace*, or considering the effect of the delayed-accrual rule for wrongful-conviction claims that this Court laid out in *Heck*. The rule the Second Circuit devised—that these fabrication claims accrue as soon as the plaintiff "becomes aware of [the] tainted evidence and its improper use" and "his liberty has been deprived in some way," *McDonough v. Smith*, 898 F.3d 259, 266-

67 (2d Cir. 2018)—sets accrual at a time very early on in the criminal process. In other words, the Second Circuit's accrual rule for § 1983 claims alleging that fabricated evidence caused a pretrial liberty deprivation is the exact opposite of the universal accrual rule for § 1983 claims alleging that fabricated evidence caused a wrongful conviction. Under the Second Circuit's rule, accrual occurs at the beginning of the criminal process. Under the *Heck* rule, accrual of § 1983 wrongful-conviction claims is delayed until the end of the criminal process—after the conviction has been invalidated.

Applying opposite accrual rules to claims challenging the same unconstitutional conduct, based on whether a criminal conviction is then in effect, leads to arbitrary, irrational and fundamentally unjust results. As case examples of actual exonerees represented by the Innocence Network illustrate, applying the Second Circuit's accrual rule would leave many exonerees with either a severely limited remedy or no remedy at all.

For example, take an exoneree, like Juan Rivera, whose 20 continuous years of wrongful incarceration were the result of three successive wrongful convictions for the same murder (based on the same fabricated evidence) before he was ultimately exonerated by DNA. As described more fully below, combining the *Heck* rule, which delays accrual only while a conviction is in effect, with the Second Circuit's rule, which holds that claims for fabrication causing pretrial detention accrue as soon as the evidence is used, would leave Rivera at the time of his exoneration with a § 1983 remedy for only the final

2 ½ years of his wrongful imprisonment—those attributable to his third and final wrongful conviction.

Or consider exonerees, like Anthony Wright and John Restivo, whom prosecutors unreasonably sought to re-try after exonerating evidence led to the vacatur of their convictions. Because the *Heck* rule alone delays accrual only until the time the wrongful conviction is invalidated, if the Second Circuit's rule applied, such continued prosecution could easily stretch until after the time for bringing a § 1983 suit expired. These exonerees would be left with an intolerable choice: focus on defending against charges seeking to imprison them for crimes they did not commit and forego any constitutional remedy for the years already lost, or bring a § 1983 suit before the charges are dismissed and risk compromising their criminal defense.

In addition, the Second Circuit's rule would leave many exonerees without a remedy for time they spent in pretrial detention. For some exonerees that time can be substantial—for example, Jonathan Barr spent 4 years detained pretrial before his wrongful conviction. And should a criminal defendant win an acquittal after years of pretrial detention, under the Second Circuit's rule, by that time it would already be too late to sue.

In each case, the unconstitutional misconduct—the use of fabricated evidence to detain unlawfully—is the same. And the harm suffered by the plaintiff—namely years of wrongful detention—is also the same. But under the Second Circuit's rule, exonerees under any of the above circumstances would be substantially worse off than the typical exoneree who spends years

imprisoned based on a single wrongful conviction before the near simultaneous vacatur of the conviction and dismissal of all charges.

The Network respectfully submits that the Second Circuit's decision is erroneous. For all the same reasons that accrual is already delayed for § 1983 wrongful-conviction claims, accrual should be delayed for any § 1983 claim alleging that fabricated evidence caused wrongful criminal proceedings.

ARGUMENT

I. THE PROTOTYPICAL SECTION 1983 FABRICATION OF EVIDENCE CLAIM INVOLVES A WRONGFUL CONVICTION

As far back as *Mooney v. Holohan*, this Court has made clear that a conviction based on fabricated evidence violates the Due Process Clause: "if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury . . . [s]uch a contrivance . . . is inconsistent with the rudimentary demands of justice." 294 U.S. 103, 112 (1935); *see also Miller v. Pate*, 386 U.S. 1, 7 (1967) ("More than 30 years ago this Court held that the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence.") (internal citations omitted); *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (calling the principle that the government "may not knowingly use false evidence . . . to obtain a tainted conviction . . . implicit in any concept of ordered liberty"). As one circuit court summarized, "if any concept is fundamental to our American system of

justice, it is that those charged with upholding the law are prohibited from deliberately fabricating evidence and framing individuals for crimes they did not commit." *Limone v. Condon*, 372 F.3d 39, 44–45 (1st Cir. 2004).

Unsurprisingly, all eleven circuits to consider the issue have found that an individual who was convicted based on deliberately fabricated evidence has a cognizable cause of action under § 1983. *See, e.g.*, *Whitlock v. Brueggemann*, 682 F.3d 567, 585 (7th Cir. 2012) (noting that "all courts that have directly confronted the question . . . agree that the deliberate manufacture of false evidence contravenes the Due Process Clause"); *see also Limone*, 372 F.3d at 45; *Bellamy v. City of New York*, 914 F.3d 727, 745 (2d Cir. 2019); *Halsey v. Pfeiffer*, 750 F.3d 273, 294 (3d Cir. 2014); *Washington v. Wilmore*, 407 F.3d 274, 282 (4th Cir. 2005); *Castellano v. Fragozo*, 352 F.3d 939, 942 (5th Cir. 2003) (en banc); *Gregory v. City of Louisville*, 444 F.3d 725, 744–45 (6th Cir. 2006); *Wilson v. Lawrence Cty.*, 260 F.3d 946, 954 (8th Cir. 2001); *Spencer v. Peters*, 857 F.3d 789, 798 (9th Cir. 2017); *Pierce v. Gilchrist*, 359 F.3d 1279, 1293 (10th Cir. 2004); *Jones v. Cannon*, 174 F.3d 1271, 1289 (11th Cir. 1999).

As this Court has explained, "[a] damages remedy against the offending party is a vital component of any scheme for vindicating cherished constitutional guarantees." *Owen v. City of Independence, Mo.*, 445 U.S. 622, 651 (1980). Such a remedy acts both "to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158,

161 (1992). An established body of academic work, some of it based on empirical studies, confirms that § 1983 suits are an effective means of deterring official misconduct. *See, e.g.*, Brandon L. Garrett, *Innocence, Harmless Error, and Federal Wrongful Conviction Law*, 2005 Wis. L. Rev. 35, 101–02 (discussing the role of § 1983 suits in uncovering and preventing police misconduct that "predictably causes . . . wrongful convictions"); Joanna C. Schwartz, *What Police Learn From Lawsuits*, 33 Cardozo L. Rev. 841, 661-62 (2012) (showing, based on data of law enforcement agencies, that lawsuits serve an important role in deterring police misconduct that civil complaints and use-of-force reports cannot fulfill); Jeffrey Standen, *The Exclusionary Rule and Damages: An Economic Comparison of Private Remedies for Unconstitutional Police Conduct*, 2000 B.Y.U. L. Rev. 1443, 1487 (damages imposed via constitutional tort suits have a greater deterrent effect on police misconduct than mere exclusion of constitutionally impermissible evidence).

II. SECTION 1983 CLAIMS FOR WRONGFUL CONVICTION BASED ON FABRICATED EVIDENCE FOLLOW A DEFERRED ACCRUAL RULE UNDER *HECK V. HUMPHREY*

In *Heck v. Humphrey*, this Court established an unambiguous delayed-accrual rule for § 1983 claims—like the prototypical fabrication-of-evidence claim—seeking compensation for injuries due to a wrongful conviction: "[A] § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or

sentence has been invalidated." 512 U.S. 477, 489–90 (1994).

While serving a 15-year sentence for voluntary manslaughter, petitioner Roy Heck brought a *pro se* § 1983 suit for money damages, alleging that investigative misconduct by prosecutors and investigators had caused him to be wrongly convicted. *Id.* at 478–49. Noting that "[o]ver the centuries the common law of torts has developed a set of rules to implement the principle that a person should be compensated fairly for injuries caused by the violation of his legal rights," this Court looked to the common law of torts to fashion an accrual rule for such § 1983 wrongful-conviction claims. *Id.* at 483 (internal citation and quotation marks omitted). The Court found "[t]he common-law cause of action for malicious prosecution provides the closest analogy to claims of the type considered here because . . . it permits damages for confinement imposed pursuant to legal process." *Id.* at 484. And "[o]ne element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused." *Id.*

Drawing on this analogy, the Court issued a rule focused specifically on § 1983 claims, like Heck's, challenging a conviction: "in order to recover damages for allegedly unconstitutional conviction or imprisonment . . . a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Id.* at 486–87. The Court clarified that this was a rule of

delayed accrual: "the statute of limitations poses no difficulty" for such § 1983 wrongful-conviction claims because, until the conviction or sentence has been invalidated, "the § 1983 claim has not yet arisen." *Id.* at 489.

The Court made clear that the procedure of determining an accrual rule by analogy is no empty formality. Rather, it provides a way to incorporate the claim-processing wisdom fine-tuned "[o]ver the centuries" in the common law. *Id.* at 483; *see also Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 921 (2017) (describing the common law "as a source of inspired examples" for § 1983 claims) (internal citation and quotation mark omitted). The Court explained how the same concerns that had led to the adoption of a favorable-termination requirement for common-law malicious-prosecution claims—avoiding parallel litigation, promoting finality and consistency, while preventing collateral attacks on criminal proceedings through independent civil suits—supported applying a like rule to § 1983 suits. *Heck*, 512 U.S. at 485–86.

In the twenty-five years since *Heck* was decided, courts have consistently applied "the now well-known rule that when an otherwise complete and present § 1983 cause of action would impugn an extant conviction, accrual is deferred until the conviction or sentence has been invalidated." *Bradford v. Scherschligt*, 803 F.3d 382, 386 (9th Cir. 2015). As a result, § 1983 claims that fabricated evidence caused a wrongful conviction do not accrue—and the statute of limitations does not begin to run—until that conviction is vacated. *Id.*; *see also, e.g.*, *Savory v. Cannon*, 912 F.3d 1030, 1034 (7th Cir. 2019); *Mills v. Barnard*, 869 F.3d 473, 484 (6th Cir. 2017);

Castellano, 352 F.3d at 959–60; *Figueroa v. Rivera*, 147 F.3d 77, 80-81 (1st Cir. 1998).[2]

This deferred-accrual rule is not limited to claims alleging fabrication of evidence. For example, courts have consistently held that § 1983 suits alleging *Brady* violations likewise do not accrue until the wrongful conviction is invalidated. *See, e.g.*, *Figueroa*, 147 F.3d at 80–81; *Owens v. Baltimore City State's Attorneys Office*, 767 F.3d 379, 388–92 (4th Cir. 2014); *Poventud v. City of New York*, 750 F.3d 121, 132–34 (2d Cir. 2014) (en banc); *Jordan v. Blount Cty.*, 885 F.3d 413, 415-16 (6th Cir. 2018); *Savory*, 912 F.3d at 1034; *Buckley v. Ray*, 848 F.3d 855, 867 (8th Cir. 2017); *Rosales-Martinez v. Palmer*, 753 F.3d 890, 895–96 (9th Cir. 2014); *Smith v. Gonzales*, 222 F.3d 1220,

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[2] Despite universal recognition that the *Heck* bar must be lifted before a § 1983 claim may be brought, courts have not treated favorable termination as a substantive element of § 1983 wrongful-conviction claims, as the Petitioner advocates at Pet. Br. 35–44. *See, e.g.*, *Halsey*, 750 F.3d at 294, 296–97 (compare description of elements of § 1983 fabrication claim—that plaintiff "has been convicted at a trial at which the prosecution has used fabricated evidence" and "there is a reasonable likelihood that, without the use of that evidence, [he] would not have been convicted"—with later description of § 1983 malicious prosecution claim, which includes element of favorable termination); *see also Mills*, 869 F.3d at 484 ("The basis of a fabrication-of-evidence claim under § 1983 is an allegation that a defendant knowingly fabricated evidence against [a plaintiff], and [that] there is a reasonable likelihood that the false evidence could have affected the judgment of the jury.") (internal quotation marks and citation omitted); *Spencer*, 857 F.3d at 798 ("To prevail on a § 1983 claim of deliberate fabrication, a plaintiff must prove that (1) the defendant official deliberately fabricated evidence and (2) the deliberate fabrication caused the plaintiff's deprivation of liberty.").

1221–23 (10th Cir. 2000); *Porter v. White*, 483 F.3d 1294, 1304 n.6 (11th Cir. 2007).

Perhaps unsurprisingly for a case "at the intersection of the two most fertile sources of federal-court prisoner litigation" (§ 1983 and habeas corpus), *Heck*, 512 U.S. at 480, *Heck* has now been cited tens of thousands of times. Over that time, it has become clear that the deferred-accrual rule embodied in *Heck* generally has salutary consequences. It simultaneously provides a simple way to dismiss many frivolous claims and permits those with meritorious claims—like exonerees—to bring timely suits once they are finally able to win their release, often many years after they were wrongly convicted.

The rationales animating *Heck* would apply equally to any challenge to ongoing criminal proceedings. Indeed, the common-law favorable-termination rule, from which the *Heck* rule was drawn, applies to any criminal proceeding. But the precise holding of *Heck* hinges on the existence of a conviction. *See, e.g.*, *Wallace v. Kato*, 549 U.S. 384, 393 (2007) ("[T]he *Heck* rule for deferred accrual is called into play only when there exists 'a conviction or sentence that has *not* been . . . invalidated,' that is to say, an 'outstanding criminal judgment.'") (quoting *Heck*, 512 U.S. at 486–87) (alteration in original). In other words, courts have interpreted the holding of *Heck* to defer accrual of a § 1983 claim only during the time period between the trial and the invalidation of that conviction—even if the same criminal proceedings stretch on both before and after that time. *See, e.g.*, *Bradford*, 803 F.3d at 386 ("*Heck* applies only when there is an extant conviction.").

III. THE "FAVORABLE TERMINATION" RULE SHOULD APPLY TO ANY SECTION 1983 CLAIM THAT FABRICATED EVIDENCE WAS USED IN CRIMINAL PROCEEDINGS

A. Section 1983 fabrication claims seeking damages for pretrial detention present a distinct question, but the same accrual rule should apply

In addition to the universally recognized § 1983 cause of action for fabrication of evidence that causes a wrongful conviction, many circuits also recognize a § 1983 claim where fabricated evidence causes a *pre-trial* liberty deprivation (regardless of an ultimate conviction). *See Black v. Montgomery Cty.*, 835 F.3d 358 (3d Cir. 2016) ("The harm . . .occurs whether or not one is convicted."); *Cole v. Carson*, 802 F.3d 752, 767–68 (5th Cir. 2015) ("[A] victim of intentional fabrication of evidence by officials is denied due process when he is either convicted or acquitted."), *vacated on other grounds sub nom Hunter v. Cole*, 137 S. Ct. 497 (2016); *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1328 (11th Cir. 2015) (fabrication of evidence causing pretrial liberty deprivation cognizable under Due Process Clause); *cf Lewis v. City of Chicago*, 914 F.3d 472, 476–80 (7th Cir. 2019) (holding that the Fourth Amendment, not the Due Process Clause, exclusively covers claims for pretrial detention).

The claim that fabricated evidence caused a *pre-trial* liberty deprivation is what is at issue here, as Petitioner was never convicted. Petitioner alleges that Respondent fabricated false affidavits and other evidence in order to wrongly cause him to be charged

with election fraud. *McDonough*, 898 F.3d at 263–64. Although Petitioner was tried twice on those charges—and suffered a liberty deprivation to the extent "he was arrested and stood trial"—the first trial ended in a mistrial and the second trial ended in an acquittal. *Id.* at 264, 266.

As a result, the deferred-accrual rule for § 1983 wrongful-conviction claims established by this Court in *Heck* is not directly implicated by Petitioner's case. As the Second Circuit noted, "McDonough was never convicted, so *Heck* is not called into play." *McDonough*, 898 F.3d at 269 (internal quotation marks omitted).

B. Under the *Wallace* framework, any Section 1983 fabrication claim is analogous to malicious prosecution, and accrues upon favorable termination of the criminal proceeding

In *Wallace v. Kato*, this Court clarified that the same process the Court applied to determine the accrual rule in *Heck*—analogizing to the closest common-law claim—was the way to determine the accrual rule for *any* § 1983 claim. Just as the Court analogized to malicious-prosecution claims for the wrongful-conviction claims at issue in *Heck*, malicious prosecution provides the appropriate analogy for claims that fabrication of evidence cause *any* wrongful criminal proceedings. *See* Pet. Br. 23–28. That is the conclusion reached by every other circuit to examine this question after *Wallace*. *See, e.g.*, *Floyd v. Attorney General*, 722 F. App'x 112, 113 (3d Cir. 2018) (per curiam); *Bradford*, 803 F.3d at 387–88; *Mills*, 869

F.3d at 484; *Mondragón v. Thompson*, 519 F.3d 1078, 1083 (10th Cir. 2008).

IV. THE SECOND CIRCUIT DECISION WOULD DEPRIVE SOME EXONEREES OF A REMEDY AND CREATE STARKLY DIVERGENT OUTCOMES FOR SIMILARLY SITUATED PLAINTIFFS

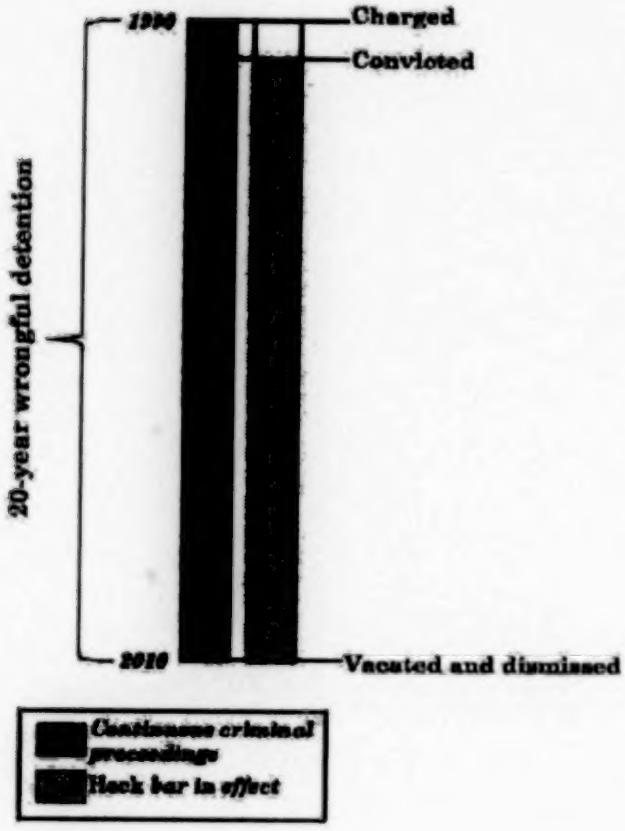
A. Deviation from the *Heck/Wallace* framework would result in irreconcilable results in Section 1983 lawsuits arising from prosecutions based on fabricated evidence

Given the clear deferred-accrual rule provided by *Heck* during the period a conviction is in effect, many exonerees would be largely unaffected by the adoption of the Second Circuit's accrual rule for pretrial § 1983 fabrication claims. But others could be left with a drastically reduced remedy or even no remedy at all. Exploring how the result in this case might affect exonerees highlights how applying different accrual rules for § 1983 fabrication claims—depending on whether the damages sought involved a wrongful conviction—would produce irrational, arbitrary and unjust results.

A person prosecuted based on fabricated evidence typically is detained for some period of time pretrial, then convicted. That person then typically fights for years to prove his innocence before ultimately winning release (if ever). In the simplest case, the deferred-accrual rule of *Heck* would control and ensure there was access to a § 1983 remedy after the exoneration. If the exoneree had spent his years

imprisoned as the result of one conviction, and had that conviction vacated and the charges dismissed simultaneously, then under the *Heck* rule he could timely bring suit seeking damages for his wrongful conviction after the exoneration.

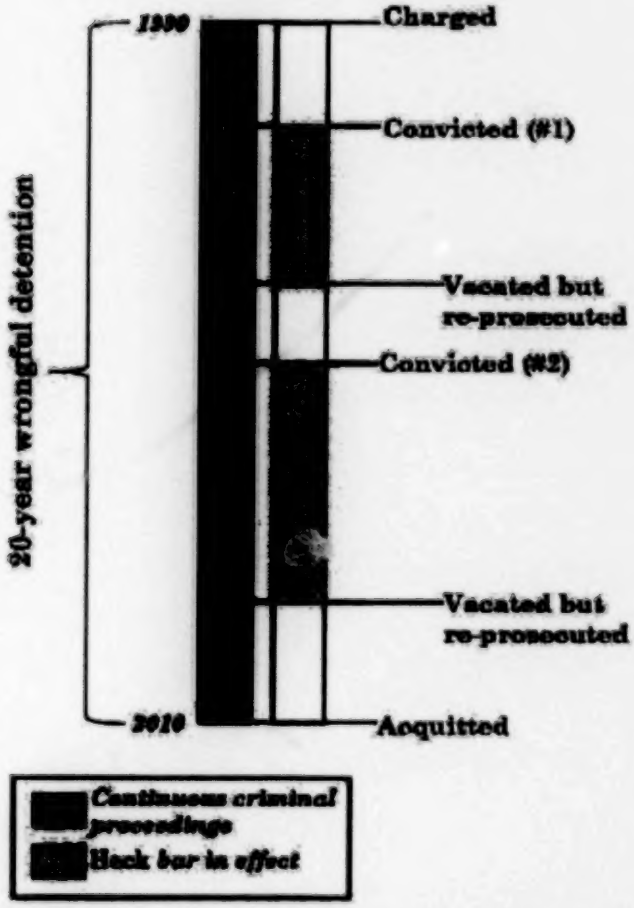
Chart 1: Simple Case



As depicted in Chart 1, in that simple case, the total time of detainment is almost completely congruent with the time that claim accrual is delayed by the *Heck* bar. Based solely on the *Heck* rule, then, the exoneree can seek compensation in a § 1983 suit brought after his exoneration for virtually all of the damages he actually suffered. And because in that simple example the vacatur of the conviction (which lifts the *Heck* bar) is simultaneous with the dismissal of charges, the exoneree would have ample time to file a § 1983 suit after he was exonerated.

But not all cases are so simple. Innocent people incarcerated for crimes they did not commit often fight, tirelessly, to obtain their release. As a result, the procedural history of their cases can be quite complex. For example, the same fabricated evidence can lead to a series of wrongful convictions for the same crime, rather than one wrongful conviction. Or the prosecution can continue for years after the wrongful conviction is vacated, before the exoneree is ultimately acquitted at trial or the charges are dismissed. And some exonerees have spent years detained pretrial before their wrongful convictions.

Chart 2: Complex Case



As Chart 2 demonstrates, in cases with those procedural complexities, the *Heck*-bar alone no longer roughly covers the entirety of the wrongful prosecution and detention. The *Heck*-bar only applies from the time of conviction through vacatur of that specific conviction, and does not delay accrual while there is no conviction in effect (even though criminal proceedings and detention both continue). Applying a favorable-termination rule to all § 1983 fabrication

claims—as every other circuit to examine the issue after *Wallace* has done—delays accrual of the § 1983 claim until after the exoneration. That means that an exoneree can timely bring suit after his complete exoneration, and seek compensation for the entirety of the time spent wrongly detained based on fabricated evidence—*i.e.*, the entirety of the blue bar depicted in Chart 2.

In contrast, the Second Circuit's accrual rule would artificially divide a continuous wrongful detention—all due to the same fabricated evidence—into separate claims that accrue at different points. It would also subject victims of similar constitutional deprivations to meaningfully disparate accrual rules, based on circumstances over which they have no control and which are, in essence, pure happenstance. As the cases below illustrate, the Second Circuit's rule would effectively preclude some exonerees from vindicating their constitutional deprivations, merely because of the specific legal process to which they were subjected.

B. Continuous incarceration based on a series of separate convictions—the case of Juan Rivera[3]

Juan Rivera spent 20 years wrongly imprisoned for a rape-murder he did not commit, before he was ultimately exonerated by DNA evidence. Although Rivera was continuously in custody, always under a single indictment, his imprisonment was the result of

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[3] All facts are taken from pleadings filed on the docket at *Rivera v. Lake County*, No. 12-cv-8665 (HDL) (N.D. Ill. 2012), unless otherwise noted.

three successive convictions for the same crime. He ultimately brought a § 1983 fabrication claim, after his exoneration, seeking damages for this wrongful imprisonment. Under the Second Circuit's rule, in combination with the existing *Heck* rule, his fabrication claims would have accrued separately for each wrongful conviction at the time it was reversed, and therefore the statute of limitations for all but the third and final wrongful conviction would have long expired by the time he was exonerated.

On August 17, 1992, 11-year-old Holly Staker was violently raped and murdered while babysitting two young children. After months without solving this horrific crime, Lake County, Illinois detectives turned to Rivera, a 19-year-old former special-education student who had recently moved to the county from Puerto Rico. Detectives interrogated Rivera relentlessly until, after 3:00 a.m. on the fourth day of ongoing interrogation, he was left catatonic in his cell, having ripped pieces of his own scalp from his skull. Detectives then wrote out a fabricated confession which they forced Rivera to sign. That confession was so inconsistent with the facts of the crime that investigators later re-wrote it and had Rivera sign it again.

Rivera was tried for Staker's murder three times, with the fabricated confession consistently serving as the linchpin. Rivera was first convicted on November 19, 1993, receiving a life sentence. Three years later, that conviction was reversed for cumulative trial errors. Rivera was tried and convicted a second time on October 2, 1998, and again sentenced to life imprisonment.

Nearly seven years later, in May 2005, DNA tests confirmed that the semen recovered from Staker's body was not Rivera's, proving Rivera's innocence. The trial court vacated Rivera's conviction and ordered a new trial.

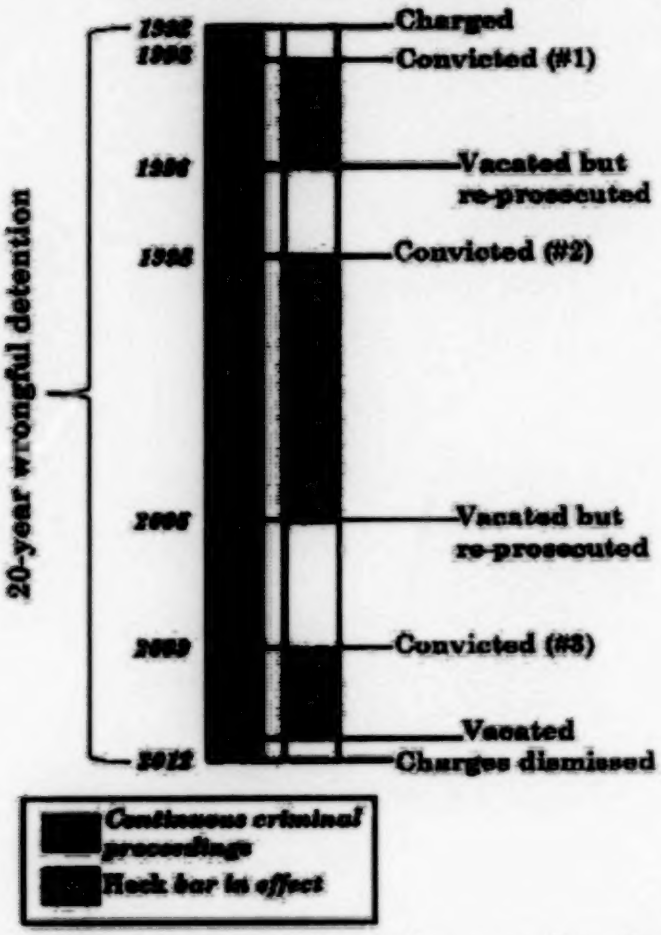
Despite this exonerating DNA, prosecutors refused to drop the charges. They speculated that 11-year-old Staker may have had consensual sex before she was raped and murdered or, in the alternative, that lab technicians could have contaminated the sample with someone else's semen. Neither argument was supported by any fact or expert evidence. Nevertheless, in 2009 a jury again credited the fabricated confession and found Rivera guilty. On appeal, the Illinois Appellate Court held unanimously that Rivera's conviction was "unjustified and cannot stand" because a rational jury could not have convicted him. *People v. Rivera*, 962 N.E.2d 53, 67 (Ill. App. Ct. 2011).

Rivera was finally released from prison on January 6, 2012, nearly 20 years after he was first wrongly incarcerated based on the confession detectives fabricated—but only two-and-a-half years after his most recent wrongful conviction.

Following his release from prison, Rivera brought a § 1983 wrongful conviction suit against the detectives who framed him by fabricating the false confession. According to Rivera, the fabricated evidence caused not only the deprivation of his liberty for nearly 20 years, but also subjected him, during his incarceration, to "attempts on my life [as well as] attempted rapes and all kind of different actions that

I went through in prison."[4] The lawsuit was settled before trial in March 2015.

Chart 3: Juan Rivera's Case



Had the Second Circuit's accrual rule been applied to Rivera's case, only damages attributable to

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[4] Paul Meincke, *Juan Rivera Wins Largest Wrongful Conviction Settlement in U.S. History*, ABC7 Chicago (Mar. 20, 2015), https://perma.cc/LQ59-TBDW.

the final two-and-a-half years of his wrongful incarceration would have been compensable—even though there was no point during his 20-year ordeal when he could have litigated a § 1983 suit. Under *Heck*, accrual is deferred only while a conviction is in place; that bar lifts at the time of vacatur. The combination of the Second Circuit's rule with the existing *Heck* rule would mean each wrongful-conviction cause of action would accrue separately upon each reversal—even though Rivera remained detained and remained subject to continued prosecution based on the same fabricated evidence. In effect, under the Second Circuit's rule, Rivera would be penalized for having fought his case vigorously enough to win two reversals before his ultimate exoneration. In contrast, under the majority rule, which requires favorable termination for all § 1983 fabrication claims, Rivera's § 1983 fabrication claim covering the entirety of the wrongful prosecution and detention would not accrue until after the charges were dismissed.

C. Lengthy prosecution after vacatur

1. The case of Anthony Wright[5]

Anthony Wright spent more than 25 years wrongly imprisoned for a rape-murder he did not commit, until he was ultimately exonerated by incontrovertible DNA evidence identifying the true perpetrator. But despite the exonerating evidence that led the court to vacate his conviction, the

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[5] All facts are taken from pleadings filed on the docket at *Wright v. City of Philadelphia*, No. 16-cv-5020 (GEKP) (E.D. Pa. 2016), unless otherwise noted.

prosecutor insisted on retrying Wright. He, too, ultimately brought a § 1983 fabrication claim following his second trial. Although *Heck* defers accrual until vacatur, under the Second Circuit's rule, accrual would not be delayed further even though Wright remained jailed and was facing re-prosecution—forcing him to choose between fully litigating the ongoing criminal proceeding in which he was enmeshed and potentially forfeiting his § 1983 claim if the statute of limitations ran on his claim before he could win an acquittal.

On October 18, 1991, Louise Talley, a 77-year-old widow living alone, was brutally raped and murdered in her home in North Philadelphia. Philadelphia Police Department ("PPD") detectives quickly zeroed in on Wright, a 20-year-old African-American father who used to live in the neighborhood, even though he had no ties to Ms. Talley or the crime.

After hours of unsuccessful interrogation, detectives handcuffed Wright to a chair and presented him with a nine-page fabricated confession, handwritten by one of the detectives. When Wright refused to sign, one of the detectives screamed that he would "rip [his] eyes out" and "skull-f**k" him. Under this coercion, Wright signed the confession. It claimed Wright had raped Talley and had worn specific clothing—a Chicago Bulls shirt, a pair of blue jeans with black suede patches and black Fila sneakers—during the crime. This clothing had been found in the victim's home after the crime, but to shore up the fabricated confession, PPD detectives fabricated vouchers to falsely indicate that these items were found during a search of Wright's bedroom.

On the basis of this fabricated evidence, Wright was prosecuted on capital charges for the Talley rape-murder. Wright testified in his defense, asserting his innocence and describing how his confession had been coerced and fabricated, and that the clothes police claimed they had found in his room were not his. He was convicted of all charges on June 18, 1993, coming within a few votes of the death penalty. Wright was ultimately sentenced to life without parole.

For two decades, Wright pursued every possible avenue for post-conviction relief. Finally, in January 2013, DNA testing of the single, male DNA profile recovered from a vaginal swab of Talley conclusively excluded Wright as the source of that DNA. Three months later, that DNA profile was matched to Ronnie Byrd—a local crack-cocaine addict with a violent criminal history who, at the time, had been squatting in an abandoned building near Talley's home.

Subsequent DNA testing provided further proof not only of Wright's innocence, but that PPD detectives had intentionally fabricated the evidence against him. In August 2014, interior portions of the clothing detectives claimed they had recovered from Wright's bedroom were tested for "wearer" DNA. The DNA testing on all three items of clothing proved what Wright had always claimed: that he had never worn the clothes. Instead, the DNA testing showed the victim, Talley, had worn all three items.

Wright's conviction was vacated on September 22, 2014, based on this DNA evidence of his innocence. In a stunning turn, however, the Philadelphia District